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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

J. DOE 1 et al.,
Individual and Representative Plaintiffs,
v.
GITHUB, INC., et al.,
Defendants.

Case Nos. 4:22-cv-06823-JST
4:22-cv-07074-JST

**PLAINTIFFS' MOTION FOR ENTRY OF
PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS,
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS (FRCP 26(c)(1)(G), L.R. 7-1)**

Judge: Hon. Jon Tigar
Date: March 16, 2023
Time: 2:00 p.m.
Courtroom: 6, 2nd Floor

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 26(c)(1)(G),
3 Civil Local Rule 7-1, Plaintiffs J. Doe 1–4 submit this motion for entry of a protective order for
4 litigation involving patents, highly sensitive confidential information and/or trade secrets.

5 INTRODUCTION

6 Plaintiffs anticipate both parties will exchange confidential information in this case.
7 Plaintiffs anticipate such information may be first exchanged as early as March 7, 2023, when the
8 parties' Initial Disclosures are due to be exchanged pursuant to Federal Rule of Civil Procedure
9 26(a)(1)(C). Plaintiffs first shared a draft stipulated protective order with Defendants on
10 December 13, 2022. Plaintiffs offered to meet and confer at that time, and on two subsequent
11 occasions. To date, Plaintiffs have not received a response to any of their requests.

12 DISCUSSION

13 In litigation involving confidential information, such as this one, it is common for the
14 parties to stipulate to a protective order that governs the use of confidential information in the
15 case. The Court provides model protective orders for this purpose. Plaintiffs based their draft
16 stipulated protective order (the "Draft Protective Order") on the Northern District of
17 California's Model Protective Order for Litigation Involving Patents, Highly Sensitive
18 Confidential Information and/or Trade Secrets. The Draft Protective Order is identical to the
19 Court's model protective order of the same title, except for the addition of case-identifying
20 information and the elimination of certain language denoted as optional. Declaration of Joseph
21 Saveri ("Saveri Decl.") ¶ 7. These forms of protective orders have proved to be practical and
22 useful. They are widely and successfully used by parties to litigation in this District and have
23 served as models in federal district courts throughout the United States.

24 Plaintiffs first shared the Draft Protective Order with Defendants on December 13, 2022,
25 asking that Defendants provide a time to meet and confer. Saveri Decl., Ex. A. On December 14,
26 2022, per a request from Defendant OpenAI's counsel, Plaintiffs again shared a copy of the Draft
27 Protective Order, including tracked changes from this Court's model order. Saveri Decl., Ex. B.

1 In that message, Plaintiffs reiterated their desire to meet and confer regarding the draft stipulated
2 protective order. *Id.* Having received no response to these communications, on January 20, 2023,
3 Plaintiffs sent the Draft Protective Order to Defendants for a third time, asking to meet and
4 confer, and informing Defendants that Plaintiffs would file a motion for entry of the Draft
5 Protective Order today if Defendants did not respond. Saveri Decl., Ex. C. At the time of this
6 filing, Defendants have not responded to that message. Saveri Decl. ¶ 5.

7 Plaintiffs have made multiple efforts to meet and confer regarding the Draft Protective
8 Order. Those efforts have been rebuffed. *See* Saveri Decl., Exs. A, B, C. Plaintiffs have now given
9 Defendants over five weeks to consider the Draft Protective Order. Further delay in entering the
10 Draft Protective Order may lead to difficulties in production of documents, exchanges of
11 information, and other discovery relevant to this case along with other case inefficiencies and
12 management issues.

13 Federal Rule of Civil Procedure 26(c)(1)(G) provides the Court may enter a protective
14 order “requiring that a trade secret or other confidential research, development, or commercial
15 information not be revealed or be revealed only in a specified way.” This case involves computer
16 software. In addition to confidential information regarding the named Plaintiffs, discovery in this
17 case may involve source code not available to the public or other information which may require
18 special protection. Plaintiffs anticipate that Defendants will not provide that source code, internal
19 communications about the product, or many other sensitive documents without a confidentiality
20 designation. Plaintiffs anticipate providing sensitive business information to Defendants as well,
21 possibly as soon as March 7, 2023, the last date to serve their Initial Disclosures. Saveri Decl. ¶ 6.

22 There is a clear need for a framework under which the parties can exchange confidential
23 information.

24 CONCLUSION

25 For the reasons set forth above, Plaintiffs Does 1–4 respectfully request that the Court
26 enter the attached [Proposed] Protective Order for Litigation Involving Patents, Highly Sensitive
27

Confidential Information and/or Trade Secrets (FRCP 26(c)(1)(G), L.R. 7-1), pursuant to Local Rule 3-12(a).

Dated: January 23, 2023

By: Joseph R. Saveri
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